

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL STREETER,

Plaintiff,

vs.

SAEILO, INC.,

Defendant.

4:18CV3077

ORDER

After conferring with counsel,

IT IS ORDERED:

- 1) As requested by the parties, this case is referred to mediation before the following mediator selected by the parties.

Michael G. Mullin
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- 2) Pending completion of the mediation, the deposition, summary judgment motion, and Daubert motion deadlines are stayed. Defendant's expert disclosure deadline remains May 20, 2019.
- 3) Except as otherwise provided herein, all parties and their counsel and any insurance company having an interest shall personally attend all mediation sessions scheduled by the mediator. At least one person from each party and insurance company shall have full settlement authority. Such persons and entities are further ordered to prepare for and participate in the mediation in accordance with the Plan and in objective good faith.
- 4) In preparing for the mediation, counsel shall:

- a. Confer with their respective clients to assure compliance with paragraph 3 and 5 of this order;
 - b. Confer with opposing counsel to:
 - i. Disclose and resolve any problematic circumstances that might give rise to a contention of lack of full settlement authority or a lack of objective good faith;
 - ii. Exchange proposals for settlement, in accordance with paragraph 5, below; and
 - c. Submit to the mediator a brief (limited to no more than four pages absent the mediator's consent to a longer submission) summary of the case, the client's attitude toward settlement, the history of the parties' prior settlement negotiations, the client's reasons, other than money, to seek settlement, and any other materials requested by the mediator, such as discovery materials and/or case citations. A copy need not be given opposing counsel.
- 5) Prior to the mediation, counsel shall exchange proposals for settlement and discuss their clients' respective aims in settlement. If, as a result of such discussions, counsel for any party is of the view that the parties' positions and interests are so divergent that settlement of the dispute is not realistically possible, counsel shall seek a telephone conference with the undersigned and opposing counsel to determine whether the mediation should be cancelled. This telephone conference must be arranged in sufficient time to avoid incurring expenses by the parties, representatives, and counsel in attending the mediation session, ordinarily at least three working days before scheduled mediation. Even if the mediation is cancelled, the parties may be responsible for those expenses already incurred by the mediator in accordance with paragraph 8, below.
- 6) The parties and counsel are reminded that the court may impose sanctions, including dismissal of a claim or defense, monetary sanctions, or such other sanctions as may be authorized by Fed. R. Civ. P. 16(f), should the parties, their counsel, or those required to attend the mediation under this order fail to comply with this order in objective good faith.

- 7) Any objection to this order shall be filed within seven days and shall comply with paragraph 3(f) of the Plan. A copy shall be served on the mediator.
- 8) The cost of the mediation shall be borne by the mediating parties at the rate established by the mediator. Unless otherwise agreed, the plaintiff or plaintiffs shall pay one-half of the mediation fee, and the mediating parties shall pay equal shares to the mediation fee. If a party is unable to pay the costs of mediation, any application to incur such expenses with reimbursement from the Federal Practice Fund must be filed before with the mediation session. Judgment for the mediator may be entered for payment of fees or expenses, whether or not the mediation is successful, without advance notice if fees or expenses are not timely paid.
- 9) A telephonic conference with the undersigned magistrate judge will be held on **July 22, 2019 at 10:00 a.m.** to discuss further case progression.¹ Counsel shall use the conferencing instructions assigned to this case, (see Filing No. 22), to participate in the call.
- 10) The Clerk is directed to provide a copy of this order to all counsel of record and unrepresented parties, and to the mediator designated by the parties, enclosing with the latter a copy of the relevant pleadings and the docket sheet for this case which lists the names of the parties and counsel of record.

May 1, 2019

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

¹ This conference call will be cancelled if, prior to the call, counsel advise the court that the case is settled.